

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID PHILLIPS,

Plaintiff,

Case No.: 10-12241

Hon. Marianne O. Battani

v

BANK OF AMERICA HOME LOAN SERVICING, INC.,
FEDERAL NATIONAL HOME MORTGAGE ASSOCIATION,
CITI MORTGAGE,
WAYNE COUNTY SHERIFF'S DEPARTMENT,
WARREN EVANS,
THE COUNTY BOARD OF COMMISSIONERS,
and THE COUNTY OF WAYNE,

Defendants.

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**WAYNE COUNTY DEFENDANTS' ANSWER TO VERIFIED COMPLAINT &
AFFIRMATIVE & OTHER DEFENSES**

1. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

2. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.
3. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.
4. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.
5. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.
6. Jurisdiction within the Wayne County Circuit Court is Denied as evidenced by Defendants Notice of Removal to the United States District Court – Eastern District of Michigan - Southern Division.
7. Venue within the Wayne County Circuit Court is Denied as evidenced by Defendants Notice of Removal to the United States District Court – Eastern District of Michigan - Southern Division.

BANK OF AMERICA

8. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.
9. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.
10. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.
11. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

FEDERAL NATIONAL MORTGAGE ASSOCIATION

12. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.
13. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

14. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

15. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

CITI MORTGAGE

16. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

17. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

18. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

19. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

COUNT I

EQUITABLE RELIEF TO SET ASIDE SHERRIFF'S DEEDS

20. Defendants incorporates each answer stated above as if fully set forth herein.

21. Admit.

22. Denied.

23. Denied including all sub-parts.

24. Denied.

25. Denied.

WHEREFORE, Wayne County Defendants respectfully requests for a dismissal of this above claim, with prejudice, together with costs and attorney fees.

COUNT II

FRAUD

26. Defendants incorporates each answer stated above as if fully set forth herein.

27. Denied.

28. Denied.

29. Denied.

30. Denied.

WHEREFORE, Wayne County Defendants respectfully requests for a dismissal of this above claim, with prejudice, together with costs and attorney fees.

COUNT III

VIOLATION OF THE MICHIGAN CONSUMER PROTECTION ACT

31. Defendants incorporates each answer stated above as if fully set forth herein.

32. Denied.

33. Denied.

34. Denied.

35. Denied.

36. Denied.

WHEREFORE, Wayne County Defendants respectfully requests for a dismissal of this above claim, with prejudice, together with costs and attorney fees.

COUNT IV

GROSS NEGLIGENCE

37. Defendants incorporates each answer stated above as if fully set forth herein.

38. Admitted that Defendants acted under color of law with respect to any Sheriff's Sale. Defendants deny the remaining allegations in this paragraph.

39. Admitted, that defendants had certain duties with respect to foreclosure sales. Denied that defendants breached any such duties.

40. Denied.

41. Denied.

42. Denied.

WHEREFORE, Wayne County Defendants respectfully requests for a dismissal of this above claim, with prejudice, together with costs and attorney fees.

COUNT V – DENIAL OF DUE PROCESS

TAKING WIHTOUT JUST COMPENSATION

42 USC §1983

43. Defendants incorporates each answer stated above as if fully set forth herein.

44. Denied.

45. Denied.

46. Denied.

WHEREFORE, Wayne County Defendants respectfully requests for a dismissal of this above claim, with prejudice, together with costs and attorney fees.

COUNT VI – CIVIL CONSPIRACY REGARDING DENIAL OF DUE PROCESS

TAKING WITH JUST COMPENSATION

42 USC §1985

47. Defendants incorporates each answer stated above as if fully set forth herein.

48. Denied.

49. Denied.

40. (sic) Denied.

RELIEF REQUESTED

WHEREFORE, Wayne County Defendants, request that Plaintiff's Complaint be dismissed with prejudice, and that Wayne County Defendants be awarded attorneys fees and costs for the defense of this case.

Respectfully submitted,

MARIANNE G. TALON (35825)
Wayne County Corporation Counsel

/s/ Aaron C. Thomas
AARON C. THOMAS (P55114)
Assistant Corporation Counsel
Attorney for Wayne County Defendants
500 Griswold, 11th Floor
Detroit, Michigan 48226
(313) 224-0552
athomas@co.wayne.mi.us

Date: June 17, 2010

AFFIRMATIVE DEFENSES

The Wayne County Defendants rely upon the following affirmative and other defenses in this matter:

1. Plaintiff has failed to state a claim upon which relief can be granted, as to some or all of their claims.
2. Plaintiff claims are barred on the grounds of res judicata and collateral estoppel.
3. Plaintiff's claims are barred, in whole or in part, by the Rooker-Feldman and Younger abstention doctrines.
4. This court lacks subject-matter jurisdiction over some or all of Plaintiff's

claims.

5. Plaintiff's claims are barred, in whole or in part, by immunity granted by law, including but not limited to Michigan's Governmental Tort Liability Act.

6. Plaintiff's claims are barred, in whole or in part, because the individual Defendants are entitled to qualified immunity.

7. Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

8. Plaintiff's claims are barred, in whole or in part, by the statute of frauds and the parol evidence doctrine.

9. Plaintiff's claims are barred, in whole or in part, by estoppel.

10. Plaintiff's claims are barred, in whole or in part, by laches.

11. Plaintiff's damages are barred, in whole or in part, because of his failure to mitigate his damages.

12. Plaintiff's claims are barred, in whole or in part, by the unclean hands doctrine.

13. Plaintiff has failed to plead fraud with particularity.

14. Defendants were not the proximate cause or cause-in-fact of any injury suffered by Plaintiff.

15. Plaintiff has not suffered a cognizable injury as a result of any conduct on the part of the Defendants.

16. Plaintiff lacks standing to pursue this action.

17. Plaintiff's claims are barred by judicial estoppel.

18. Plaintiff's claims are barred by the wrongful conduct rule.

19. Plaintiff is responsible for some or all of their injuries and damages, if any.

20. The Wayne County Sheriff's Department is not a legal entity amenable to suit.

21. Plaintiff's claims are barred by the applicable statute of limitations.

22. Plaintiff has failed to plead fraud with particularity.

23.

Wayne County Defendants reserve the right to amend or supplement its Affirmative & Other Defenses up to the time of trial in this matter, as additional facts and witnesses are disclosed.

/s/ Aaron C. Thomas
AARON C. THOMAS (P55114)
Assistant Corporation Counsel
Attorney for Wayne County Defendants
500 Griswold, 11th Floor
Detroit, Michigan 48226
(313) 224-0552
athomas@co.wayne.mi.us

Date: June 17, 2010

CERTIFICATE OF SERVICE

I certify that a copy of Wayne County Defendants' Answer, Affirmative & Other Defenses, Appearance of Counsel, and this Certificate of Service, were filed with the Clerk of the Court on June 21, 2010, via the ECF system, which will provide electronic notification of the filing to the following ECF participants: Horace D. Cotton, Esquire, and the following non-ECF participants were served by U.S. Mail: None.

/s/ Aaron C. Thomas
Aaron C. Thomas (P55114)
Assistant Corporation Counsel

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